

GARY BRUCE BROOKS,)	
)	
Petitioner,)	3:11-cv-00328-RCJ-WGC
)	
vs.)	
)	
ROBERT LEGRAND,)	ORDER
)	
Respondent.)	

The motion to dismiss contends that all three grounds of the petition remain unexhausted in state court. It is imperative that a federal petitioner has given the state courts a full and fair opportunity to review and, if necessary, remedy any federal constitutional violations claimed by a criminal defendant. *See* 28 U.S.C. § 2254(b); *see also Rose v. Lundy*, 455 U.S. 509 (1982); *Carothers v. Rhay*, 594 F.2d 225, 228 (9th Cir. 1979). Petitioner has not disputed the allegations about exhaustion of the claims made by the respondents. As a result, this Court will grant the motion to dismiss. LR 7-2(d).¹

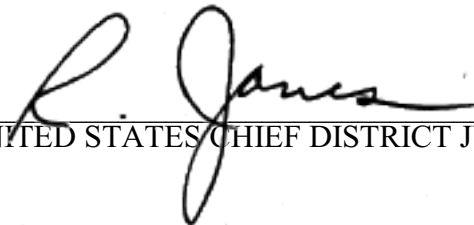
¹ . . . The failure of a opposing party to file points and authorities in response to the motion shall constitute a consent to the granting of the motion.

1 Where the allegation is that the claims are unexhausted, the dismissal shall be without
2 prejudice. Should petitioner properly exhaust his claims in state court, he may pursue his claims
3 with this court once again.²

4 **IT IS THEREFORE ORDERED** that the Motion to Dismiss (ECF No. 9) is
5 **GRANTED.**

6 **IT IS FURTHER ORDERED** that the petition is **DISMISSED WITHOUT**
7 **PREJUDICE.** The Clerk shall enter judgment accordingly.

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9 Dated this 25th day of September, 2012.

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13 UNITED STATES CHIEF DISTRICT JUDGE
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24 _____
25 ² The Court makes no assessment of petitioner's ability to meet the various procedural
26 requirements of 28 U.S.C. § 2254 and its related provisions should he attempt to exhaust and return.